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## Chiew Chiu Sing v Dato' Seri Tiong King Sing

HIGH COURT (MIRI) — ELECTION PETITION NO 26–1 OF 2004 (BTU)
SULONG MATJERAIE J
10 SEPTEMBER 2004

B

*Election — Petition — Appointment of advocate — Stamp duty — Amount of duty payable uncertain — Whether failure to pay stamp duty renders petition defective — Election Petition Rules 1954 r 9*

C *Election — Petition — Filing of — Computation of 21 days from date of publication of results of election in Gazette — Whether includes public holidays and Sundays — Election Offences Act 1954 s 38(1)*

*Election — Petition — Allegation of corrupt practice — Failure to plead s 32 Election Offences Act 1954 — Reliance on s 11(1)(c) instead — Whether election petition rendered defective*

D

*Election — Petition — Failure to leave two copies of petition with court — Whether election petition rendered defective — Election Petition Rules 1954 r 3(2)*

E The respondent was returned as the duly elected candidate with a winning majority of 11,267 votes. He defeated two other candidates including the petitioner. The petitioner in his petition on 5 May 2004 sought to have the election of the respondent declared void on the ground of corrupt practice under s 11(c) (*sic*) of the Election Offences Act 1954 ('EOA'). The respondent sought to have the election petition struck out or dismissed with costs based on four preliminary objections, namely (i) the election petition failed to comply with the mandatory provisions of r 9 of the Election Petition Rules 1954 ('the Rules') which requires to be left with the election petition, the appointment of advocate by the petitioner duly stamped with the stamp duty paid under the law; (ii) the election petition failed to comply with the mandatory provisions of s 38(1) of the EOA which requires the presentation of the election petition within 21 days of the date of publication of the results in the *Gazette* — in this respect, the respondent contended that the 21-day limitation expired on 3May 2004 as public holidays and Sundays are not excluded in their computation; (iii) the petitioner did not plead a proper cause of action by not pleading s 32 EOA. The petitioner had relied on s 11(c) EOA which was non-existent. With regard to this, the petitioner submitted: (a) the form does not require a specific section to be pleaded or a perfunctory label to be tagged with; and (b) the words do not require the exact form to be adopted but 'one to the like effect'. It was noted however, the particulars found in the election petition was almost word for word of s 11(1)(c) and not s 32 of the EOA; and (iv) the election petition failed to comply with the mandatory provisions of r3(2) of the Rules which requires that it shall be left with the election petition two copies thereof with the court.

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**Held**, dismissing the election petition with costs:

(1) Although r 9 of the Rules was very clear that the appointment of an advocate had to be stamped, there was nothing in the Stamp Act which provides in a clear, plain and unambiguous term that relates specifically to stamp duty payable to the 'writing on the appointment of advocate'; *United Malayan Banking Corp Bhd v Pekeliling Triangle Sdn Bhd and Another Appeal* [1991] 2 MLJ 559 followed. In such cases, where the charge statute is uncertain and open to two interpretations, one favouring the Crown and the other favours the subject, then the latter construction should be adopted. It is the subject and not the Crown that is entitled to the benefit of the doubt. Furthermore, the failure to comply with r 9 of the Rules in respect of the stamp duty payable merely goes to its admissibility. In any event, the court may under the provisions of ss 52 and 53 of the Stamp Act impound the writing appointing advocate of the petitioner and only admit it in evidence upon stamp duty and penalty, if any, being paid by the petitioner (see paras 23–24 and 27).

(2) Although technically the court was not to enlarge time, this court was constrained not to truncate time which the petitioner was entitled to consequent to the four days public holidays and Sunday from 1 to 4 May 2004. Not to allow 5 May 2004 as the last day for the petitioner to file his election petition would surely be a travesty of justice. A petitioner is acting within his right and is entitled to file the election petition on the last day of the limitation period. If it so happens that the last day is an excluded day as referred to under s 54(1)(b) of the Interpretation Act, then he may file on the next following day which is not an excluded day. Therefore, when the last day is a public holiday, based on s 54(1)(b) of Interpretation Act, the filing of the election petition can be done the next following day which is not a weekly holiday or a public holiday. The court registry was only open on 5 May 2004 and the election petition and other documents were presented on the said day (see para 44).

(3) Section 32 itemizes broadly five situations where election petitions, if proven to the satisfaction of the election judge, the election of any candidate can be avoided. There is no doubt that s 32 constitutes the only ground upon which the petition may seek an order of the court to avoid the election. It must begin with s 32 and end with s 32 EOA as it is the foundation for an election petition to be brought. As such if none of the five situations envisaged by s 32 is pleaded, there can be no cause of action upon which the petition can be brought. In this case, it will be noted that throughout the election petition, s 32 EOA was never pleaded at all. If s 32 EOA is not pleaded, there is therefore no cause of action. On this point alone there was a fatal defect and that fatal defect could not be cured because it struck at the root of the petition (see paras 49, 64 and 67–68); *Norbert Choong Kai Chong v Mohamed Idris bin Haji*

*Ibrahim* [1980] 1 MLJ 316 and *Muip bin Tabib v Dato' James Wong* [1971] 1 MLJ 246 followed; *Mohd Nor bin Ismail v Mohd Zain bin Abdullah* [1988] 2 MLJ 384 distinguished.

(4) Rule 3(2) clearly imposes a statutory obligation on the petitioner to leave two copies of the petition at the office of the registrar of the court and if this is not fulfilled, that provides the ground for the election petition to be struck out. The requirement to leave copies as provided was mandatory and non-compliance with the rule will result in dismissal of the petition; *Mohamad Hanafi bin Seman lwn Wan Othman bin Wan Yusoff* [2000] 3 MLJ 482 followed. Therefore in the context of r 3(2) and the clear line of cases, there was no room to apply the Latin maxim *Actus curae naminem gravabit* (ie the act of the court shall prejudice no one) as the statutory obligation of the petitioner was very clear (see paras 72, 79 and 81); *Board of Trustees of the Sabah Foundation v Datuk Syed Kechik* [1997] 4 MLJ 553 distinguished.

**Cases referred to**

*Arab-Malaysian Bank v Marina Mohd Yusoff* [1999] 3 CLJ 633 (refd)
*Board of Trustees of the Sabah Foundation v Datuk Syed Kechik* [1997] 4 MLJ 553 (distd)
*Bong Geok Beng v Ahmad Nordin bin Mohamed Amin & Anor* [1980] 1 MLJ 167 (refd)
*Burrard Dominion Election, Re* (1901) 22 CLT 10 (refd)
*Commissioners of Inland Revenue v Angus & Co Ltd* (1889) 23 QBD 579 (refd)
*Credit Corp Malaysia Bhd v Saraswathi Narayanan & Ors* [1999] 7 CLJ 459 (refd)
*Dato' Loh Fook Yen, Re, ex p Malayan United Finance Bhd* [1988] 3 MLJ 499 (refd)
*Dr Lee Chong Meng v Abdul Rahman bin Haji Abdullah (No 2)* [2000] 3 MLJ 219 (refd)
*DYTM Tengku Idris Shah ibni Sultan Sallahuddin v Dikim Holdings Sdn Bhd* [2002] 2 MLJ 11 (refd)
*Gelmini v Morrigia* (1913) 2 KB 549 (distd)
*Jagan Nath v Jaswant Singh & Ors* [1954] SCR 892 (refd)
*Mohamad Hanafi bin Seman Iwn Wan Othman bin Wan Yusoff* [2000] 3 MLJ 482 (folld)
*Mohd Nor bin Ismail v Mohd Zain bin Abdullah* [1988] 2 MLJ 384 (distd)
*Morris v Richards* (1881) 45 LT 210 (distd)
*Muip bin Tabib v Dato' James Wong* [1971] 1 MLJ 246 (folld)
*Ng Hee Thoong & Anor v Public Bank Bhd* [1995] 1 MLJ 281 (refd)
*Norbert Choong Kai Chong v Mohamed Idris bin Haji Ibrahim* [1980] 1 MLJ 316 (folld)
*Overseas Investment Pte Ltd v Anthony Williams O'Brien & Anor* [1988] 3 MLJ 332 (refd)
*Ramely bin Mansor v Suruhanjaya Pilihanraya Malaysia & Ors* [2000] 2 CLJ 56 (refd)
*Ramnandan Rai v The District Judge, Sitamarhi & Ors* AIR 1980 Patna 180 (refd)
*Sabdin Ghani v Mohanied Saidi Lampoh* [1983] 2 MLJ 61 (refd)

*Satya Narain v Dhuja Ram & Ors* AIR 1974 SC 1185 (refd)
*Tengku Korish v Mohammad bin Jusoh & Anor* [1970] 1 MLJ 6 (refd)
*Tomkins v Ashby* (1827) 108 ER 551 (refd)
*United Malayan Banking Corp Bhd v Pekeliling Triangle Sdn Bhd and another appeal* [1991] 2 MLJ 559 (folld)
*Yong Kuan Teik v Devan Nair* [1965] 2 MLJ 162 (refd)
*Yusuf Abdul Rahman v Abdul Ajis Abdul Majeed & Anor* [2000] 5 CLJ 215 (refd)

**Legislation referred to**

Election Offences Act 1954 ss 11, 11(1)(c), 31, 32, (a), (b), (c), (d), (e), 32(b), (c), 38(1), 42(1), (2),
Election Petition Rules 1954 rr 3(2), 4(1)(a), (b), 4(4), 9, 16
Interpretation Acts 1948 and 1967 ss 54, (1)(a), (b)
Rules of the High Court 1980 O 3 r 2
Stamp Act 1949 ss 36, 52, 53, First Sch

*Wong Ho Leng (Chong Chieng Jen with him) (Wong Ho Leng & Co) for the petitioner.*
*Mohamad Ariff bin Md Yusof (Henry Ling Kuong Meng and Bernard Chung Wei Chiun with him) (Ling & Wong) for the respondent.*

**Sulong Matjeraie J**:

**[1]** In the recently concluded Malaysian Parliamentary Election held on 21 March 2004, for the Parliamentary Constituency of P216, Bintulu, Sarawak, Dato' Seri Tiong King Sing (hereinafter referred to as 'the respondent') was returned as the duly elected candidate with a winning majority of 11,267 votes. He defeated two other candidates, Dr Lau Hieng Kii and Mr Chiew Chiu Sing, the petitioner herein.

**[2]** The petitioner in his petition at encl 3, seeks to have the election of the respondent declared void on the ground of corrupt practice under s 11(c) (*sic*) of the Election Offences Act 1954, see para 3 thereof. The particulars given are as follows:

> The respondent, Dato' Seri Tiong King Sing and/or his agents had with his knowledge or consent during the above election printed, published, distributed and/or posted up or caused to be printed, published, distributed and/or posted up advertisements, handbills or posters which refer to the said election and which do not bear upon their faces the names and addresses of their printer and publisher thereby contravening s 11(c) (sic) of the Election Offences Act 1954.

**[3]** Further particulars were provided but suffice it to say that it is not necessary to state them at this stage as the respondent has filed a notice of motion at encl 58, on 20 July 2004 ('notice of motion') seeking for the election petition dated 5 May 2004 at encl 3, be struck out or dismissed with costs. The said notice of motion was supported by an Affidavit in Support I deposed by counsel, Mr Ling Kuong Meng and Affidavit in Support II deposed by the respondent. Both affidavits were affirmed on 20 July 2004.

**[4]** Leading counsel for the respondent, En Mohamad Ariff bin Md Yusof submitted to this court that altogether there are eight preliminary objections but as the respondent was withdrawing the issue pertaining to the need for the petitioner to comply with the mandatory provisions of s 7(1) of the Court of Judicature Act 1964 and coupled with the fact that some of his grounds overlap with each other, he has decided to combine them thus reducing the issues to four main heads, which I will address shortly. This hearing is therefore the hearing of the notice of motion and the preliminary objections.

**[5]** On the day set down for the hearing of the notice of motion, another notice of motion filed by the petitioner at encl 66 seeking to amend the petition was also scheduled to be heard on the same day and at the same time. Both counsel addressed this court on this matter.

**[6]** Leading counsel for the petitioner, Mr Wong Ho Leng urged this court to hear both motions together and offered the cases of *Mohd Nor bin Ismail v Zain bin Abdullah* [1988] 2 MLJ 384 and *Bong Geok Beng v Ahmad Nordin bin Mohamed Amin & Anor* [1980] 1 MLJ 167 as his authorities.

**[7]** After hearing both parties, I ruled that, as two fundamental issues of firstly the *locus standi* of counsel for the petitioner and secondly, the question of limitation as to when the election petition should have been filed will have to be determined first, the notice of motion at encl 58 will have to be heard first. In the event that the respondent fails in his objections, then encl 66 will be heard immediately thereafter.

FACTS NOT IN DISPUTE

(1) The Parliamentary Election was held on 21 March 2004;

(2) The election result for Parliamentary constituency of P216 Bintulu was published in the Government Gazette on 12 April 2004 [PU (B) 178];

(3) The election petition was filed on 5 May 2004;

(4) The petitioner had only filed one set of the said election petition on 5 May 2004 and did not leave two copies thereof with the court; and

(5) The petitioner had filed the appointment of advocate by the petitioner without having the same duly stamped with the stamp duly paid under the law.

**[8]** The petitioner is deemed to have admitted on the above material facts as it is settled law that any facts asserted which is not denied or disputed by the other party are deemed to be admitted (*Ng Hee Thoong & Anor v Public Bank Bhd* [1995] 1 MLJ 281 at pp 286 and 287, *Overseas Investment Pte Ltd v Anthony Williams O'Brien & Anor* [1988] 3 MLJ 332 at 333).

**[9]** I will begin by addressing the four main heads of issues although not in the same order as they have been raised. These four heads of issues or objections are as follows:

(1) Whether the said election petition failed to comply with the mandatory provisions of r 9 of the Election Petition Rules 1954 ('the Rules') which requires to be left with the election petition, the Appointment of Advocate by the petitioner duly stamped with the stamp duty paid under the law?

(2) Whether the said election petition failed to comply with the mandatory provisions of s 38(1) of the Election Offences Act ('EOA') which requires the presentation of the election petition within 21 days of the date of publication of the results in the Gazette?

(3) Whether a proper cause of action has been pleaded by the petitioner? This involves the consideration of ss 11 and 32 EOA and r 4 of the Rules. As regards s 11, whether the reliefs prayed for in the election petition to declare the election void for contravention of s 11 EOA is available in law to the petitioner?

(4) Whether the said election petition failed to comply with the mandatory provisions of r 3(2) of the Rules which requires that it shall be left with the election petition two copies thereof with the court?

**[10]** It was submitted by the respondent that if he succeeds in any one or more of the above issues, the election petition at encl 3 is liable to be struck out or dismissed. I shall now deal with all these issues one by one hereunder.

*Issue No 1 — Whether the election petition failed to comply with the mandatory provisions of r 9 of the Rules which require to be left with the election petition, the Appointment of Advocates by the petitioner duly stamped with the stamp duty paid under the law?*

**[11]** For ease of reference, r 9 of the Rules is as follows:

> Appointment of advocate by petitioner
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> With the petition the petitioner or petitioners shall leave at the office of the Registrar a writing, signed by him or them, giving the name of an advocate whom he or they authorize to act as his or their advocate or stating that he or they act for himself or themselves, as the case may be, and in either case giving an address within Malaysia at which notices may be left. Every such writing shall be stamped with the duty payable thereon under the law for the time being in force.

**[12]** On a literal reading of r 9 of the Rules, it is plain, clear and distinct that the appointment of an advocate shall be stamped with duty payable at the time or when the petitioner present and file the appointment of advocate together with the election petition. This is because the rule begins with the phrase 'with the petition' and as such at the time of the petition is presented, the appointment of an advocate must also be filed and that it be duly stamped.

**[13]** Counsel for the respondent said the current law in force on 'stamping of document' is clearly the Stamp Act 1949 ('Stamp Act') which he suggests applies throughout the Federation of Malaysia.

**[14]** 'Duly stamped' means that the instrument bears an adhesive or impressed stamp of the proper amount; and 'duty' is defined as 'any stamp duty for the time being chargeable under this Act or under any written law.'

**[15]** When I asked counsel for the respondent which particular item in the First Schedule of the Stamp Act applies to the 'writing appointing an advocate by the petitioner' he said it is under item 2 and item 4 (though 'nearer' to item 2), in the morning. Duly inspired after the lunch break, counsel changed his mind in the afternoon and said that item 38 is the one that is applicable and this attracts a stamp duty of RM10. This, he suggests was based on an election petition that he filed recently in the High Court of Malaya at Shah Alam in Selangor Darul Ehsan, at encl 100. Counsel for the petitioner said, and rightly so, that even if a stamp duty of RM10 is paid in Shah Alam, it does not necessarily mean that it is done in accordance with the law in force for the time being and suggested that we should not read too much from the sample. On the same note, item 38 need not be the appropriate item under the Stamp Act that is applicable here.

**[16]** It is further noted that item 38 of the First Schedule of the Stamp Act is in respect of deed of any kind not described in the schedule. But the writing appointing an advocate by the petitioner, is not in my view a deed! Then counsel informed the court that s 36 of the Stamp Act provides the mechanism enabling the collector to assess the duty payable in the event of uncertainty. Unfortunately, it is apparent to this court that even counsel himself is rather uncertain although he strongly maintains that the failure to stamp the writing appointing advocate for the petitioner will affect the very jurisdiction of this court and more so the *locus standi* of counsel for the petitioner.

**[17]** Counsel for the petitioner on the other hand pointed out 'appointment' per se is specified under items 6 and 7 and to some extent item 59 of the First Schedule. Applying the rule of construction of expression *unius est exclusio alterius* the express mention of one thing implies the exclusion of another. Therefore as 'appointment' has been specified under items 6, 7 and 59, 'appointment' cannot be a deed under item 38 either.

**[18]** Counsel for the petitioner however submitted that when the writing appointing an advocate by the petitioner was presented to the court's registry, fees have been paid under the praecipe in accordance with Appendix B of the Rules of High Court 1980 ('RHC') which provides the amount required to be paid. Filing fee amounting to RM104 had been paid to the registry under various codes A8, A64 and A96 being filing fees for election petition, notice of petition and notice of appointment of advocate as well as presentation of election petition and security by petitioner respectively. Therefore he argued

that the stamp duty required had been paid. I cannot accept this argument as r 9 of the Rules could not have been complied with by just paying fees. Court fees are fees but they are not stamp duty.

**[19]** The thrust of the respondent's argument is that the appointment of advocate under r 9 is chargeable with stamp duty. If one is uncertain as to which item in the First Schedule the stamp duty is payable, s 36 of Stamp Act provides the mechanism allowing the collector to assess the duty, if any, is chargeable.

**[20]** I am not satisfied that there is any provision in the First Schedule of the Stamp Act which specifically refers to the 'writing appointing an advocate by the petitioner' with duty payable thereon as envisaged by r 9 of the Rules.

**[21]** In *United Malayan Banking Corp Bhd v Pekeliling Triangle Sdn Bhd and another appeal* [1991] 2 MLJ 559, the then Supreme Court, comprising Abdul Hamid Omar LP, Mohamed Azmi and Gunn Chit Tuan SCJJ adopted the approach of Lord Tenterden who stated in *Tomkins v Ashby* (1827) 108 ER 551 where 'statutes imposing duties are to be so construed as not to make any instruments liable to them unless manifestly within the intention of the legislature.' The rules of construction of documents for stamp duty purposes and of stamp duty legislation are well summarized in the following passages from Sergeant and Sims *Stamp Duties* (9th Ed) p 18:

> (a) General rule of construction of charge
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> It is well-settled rule of law that every charge upon the subject must be imposed by clear and unambiguous language: *Denn & Maniforld v Diamond* (1825) 4 B & C 243, and a statute imposing a tax upon the subject should always receive a strict interpretation and should not be allowed to operate as a charge unless the words are plain and unambiguous: *Daines v Heath* (1847) 3 CB 938. The party who seeks to bring an instrument within the Stamp Act must show clearly that it falls within it, and no intendment can be made in favour of the liability: *Phillips v Morrison* (1844) 13 LJ Ex 272 and *R v Winstanley* (1831) 1 Cr & J 434.
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> (b) Ambiguity
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> If the statute is so indefinite and uncertain that it can be treated in two ways and the true construction of it is open to two views, one more favourable to the Crown and the other to the subject, then the latter construction should be adopted: *Clifford v IRC* (1896) 2 QB 187, approved and followed in *Hennell v IRC* (1933) 1 KB 415 (CA). In other words, the subject, and not the Crown, is entitled to the benefit of the doubt: *R v Winstanley* (1831) 1 Cr & J 434.

**[22]** We ought to bear in mind the above-quoted rules and the object of the Act relating to stamp duties is to raise revenue by requiring documents of certain kinds to be stamped. In other words, the Stamp Act concerns tax documents and not transactions (*Commissioners of Inland Revenue v Angus & Co Ltd* (1889) 23 QBD 579).

**[23]** Four things can be discerned from the above authority *viz*:

(a) Every charge upon the subject must be imposed by clear and unambiguous language;

(b) A statute imposing a tax upon the subject should be interpreted strictly and may only be allowed to operate as a charge if the words are plain and unambiguous;

(c) The party who seeks to bring an instrument within the Stamp Act must show clearly that it falls within it, and no intendment can be made in favour of the liability; and

(d) If the statute is uncertain and open to two interpretations, one favouring the Crown and the other favours the subject, then the latter construction should be adopted. It is the subject and not the Crown that is entitled to the benefit of the doubt.

**[24]** Regrettably, I find that the actual provision that applies specifically to the 'writing appointing the advocate of the petitioner' rather unclear. Although r 9 of EPR is very clear that the appointment of an advocate has to be stamped, there is nothing in the Stamp Act which provides in a clear, plain and unambiguous term that relates specifically to stamp duty payable to the 'writing on the appointment of advocate'. The 'law for the time being in force' as argued by counsel for the respondent does not, in my view, provide specifically for payment of stamp duty in respect of the writing appointing an advocate for the petitioner. Following the decision of the Supreme Court cited above, the law is to be construed in favour of the subject and in this case, the petitioner, if the state of the law is uncertain, unclear and ambiguous.

**[25]** It is doubtful in its current state, that the First Schedule of the Stamp Act which relates to instruments chargeable with stamp duty contains appropriate items that cater specifically for the payment of stamp duty on the writing appointing advocate by the petitioner as envisaged by r 9 of the Rules. The suggested items are not only inconclusive but imprecise and applying a strict interpretation on the general rule of construction they fail the test that the statute imposing every charge upon the subject must be imposed by plain, clear and unambiguous language.

**[26]** Based on the above authority and with respect, clearly therefore there is no merit in the preliminary objection. The submission of counsel for the respondent must be rejected and the preliminary objection to strike out or dismiss the petition under this heading must therefore fail.

**[27]** As a corollary I will say that the failure to comply with r 9 of the Rules in respect of the stamp duty payable merely goes to its admissibility. In any event, this Court may under the provisions of ss 52 and 53 of the Stamp Act impound the writing appointing advocate of the petitioner and only admit it in evidence upon stamp duty and penalty, if any, being paid by the petitioner.

**[28]** Now that we have settled the first issue, I will then proceed to examine the second issue which relates to the question of limitation.

*Issue No 2 — Whether the said election petition failed to comply with the mandatory provisions of s 38(1) EOA which requires the presentation of the election petition within 21 days of the date of publication of the election result in the Gazette.*

**[29]** The governing provision under this heading is of course s 38(1) EOA and it reads:

> Every election petition shall be presented within twenty-one days of the date of publication of the result of the election in the *Gazette*.

**[30]** There is no dispute on the following facts:

(a) The Parliamentary Election was held on 21 March 2004;

(b) The election result in respect of the Parliamentary Constituency P216 Bintulu was published on 12 April 2004;

(c) Excluding the date of publication, the 21 day period ended on 3 May 2004;

(d) Saturday, 1 May 2004 was a public holiday being Workers' Day;

(e) Sunday, 2 May 2004 was Prophet Muhammad SAW's Birthday;

(f) Monday, 3 May 2004 was Wesak day, thus a non-working day;

(g) Tuesday, 4 May 2004 was not a working day as it was a public holiday being a replacement for the Prophet Muhammad SAW's Birthday which fell on Sunday.

**[31]** The respondent contends that the 21 days limitation expired on 3 May 2004 as public holidays and Sundays are not excluded in their computation. It was further suggested that the 21 days mentioned in s 38(1) EOA is a special period which cannot be enlarged or extended to any provision to the Rules of High Court, see *Yusuf Abdul Rahman v Abdul Ajis Abdul Majeed & Anor* [2000] 5 CLJ 215. If the election petition is filed beyond time it has to be dismissed *in limine*, see *Ramnandan Rai v The District Judge, Sitamarhi & Ors* AIR 1980 Patna 180.

**[32]** It was submitted by counsel for the respondent that they are looking at the 21 days without any enlargement, otherwise, it is claimed that r 16 of the Rules would have no meaning. Rule 16 says: 'On the expiration of time limited for making petitions, the petition shall be deemed to be at issue.' This is a limitation period, submits the respondent. Where there is a defined statutory period it has to be strictly complied with. It was further submitted that the Rules of High Court cannot apply as there is a no *lacuna*. It is fixed at 21 days and therefore if at all there is any law that could apply it would not be the Rules of High Court but the Interpretation Acts 1948 and 1967 (Act 388) (hereinafter called 'the Interpretation Act').

**[33]** As a result of s 54(1)(a) of the Interpretation Act, the date of publication of the result of the election in the *Gazette*, will mean that 12 April 2004 is excluded. Further it was submitted that on the basis of s 54 of the Interpretation Act, if the period concerned exceeds six days, excluded days shall be included in the computation of the time. It is taken on a straight line basis, ie from 13 April 2004 right up to 3 May 2004: Sundays and public holidays are included in that computation.

**[34]** Two authorities were cited on the application of s 54 of the Interpretation Act *viz Arab-Malaysian Bank v Marina Mohd Yusoff* [1999] 3 CLJ 633 and *Credit Corp (M) Bhd v Saraswathi Narayanan & Ors* [1999] 7 CLJ 459.

**[35]** Despite the amendment of s 42(2) EOA which provides for application of the Rules of the High Court 1980, counsel for the respondent insists that because of the express provision of s 38(1) EOA and r 16 of the Rules, there is no room for the application of the RHC. He argued that the amendment to s 42(1) EOA makes it clearer that the procedure and practice on election petitions shall be regulated under the Election Petition Rules 1954 as provided for in the Second Schedule. He claims that as the 21 days is in the nature of limitation period, it would fall on the procedure and practice referred to under s 42(1) EOA.

**[36]** Counsel for respondent also introduced to this court the book by Andrew McGee on *Limitation Periods* (4th Ed), Sweet & Maxwell (2002) in particular to p 26 thereof on the subject of 'Where process cannot be issued on the last day'. It reads:

> A difficult practical problem arises when it is impossible to issue process on the last day of limitation period because the court offices are closed on that day. In two cases, *Morris v Richards* and *Gelmini v Morrigia*, it was held that time could not be extended until the next day on which the court was open. There has, of course, long been a power in rules of court to extend the time for doing any act which those rules required, but the acts involved here are required to be done by a statute, and rules of court cannot and do not purport to extend the time for these.

(This court however notes that both cases of *Morris v Richards* and *Gelmini v Morrigia* involves time of payment of promissory notes and can be distinguished from our instant case).

**[37]** It was therefore submitted by counsel for the respondent that if there is a rule of statute, the Rules of High Court cannot extend the limitation period and offered the cases of *Tengku Korish v Mohammad bin Jusoh & Anor* [1970] 1 MLJ 6 which establishes how strict the requirements are under Election Laws and *Dr Lee Chong Meng v Abdul Rahman bin Haji Abdullah (No 2)* [2000] 3 MLJ 219 where it is stated by Augustine Paul J (as his Lordship then was) that '... the statutory requirements of an election petition must be strictly observed because an election dispute is a statutory proceeding unknown to the common law or equity.' That being the case, counsel submits, if one were

to look at the four corners of the Election Offences Act and Election Petition Rules, the limitation period of 21 days comes out very clearly, expressed in clear terms. There is no scope for enlargement.

**[38]** It has to be pointed out here that in his submission, the respondent submitted to this court another authority *Re Dato' Loh Fook Yen, ex p Malayan United Finance Bhd* [1988] 3 MLJ 499 in an attempt to show that the weekend holiday or any public holiday is included in its computation but upon being pointed out by this court that the case does not support his contention, learned counsel withdrew, and rightly so, the said case as one of his authorities.

**[39]** It is to be noted that in the case of *Credit Corp v Saraswathi Narayanan* , Abdul Hamid Mohamad J (as his Lordship then was) said in no uncertain term that the computation provided under O 3 r 2 of the RHC 1980 only applies to matters that fall within the purview of the RHC 1980. 'Those outside it are governed by the provisions of s 54 of the Interpretation Act 1967.' It is in the light of this decision, that I feel I will examine the objection of the respondent.

**[40]** Section 54 of the Interpretation Act relating to the computation of time reads:

> Computation of time
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> (1) In computing time for the purposes of any written law —
>
> (a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;
>
> (b) if the last day of the period is a weekly holiday or a public holiday (referred to in this sub-section as excluded days) the period shall include the next following day which is not an excluded day;
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> (c) where any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next following day which is not an excluded day; and
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> (d) where any act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of time.
>
> (2) Where no time is prescribed within which anything shall be done, that thing shall be done with all convenient speed and as often as the prescribed occasion arises.

**[41]** This court takes judicial notice that the court registry was closed on the non-working days of 3 and 4 of May 2004.

**[42]** However, what the respondent is submitting is that even if the court registry is closed on 3 May 2004, the 21-day limitation ends there and it means that the election petition must be submitted on that day or the day before when the court registry was open.

**[43]** Clearly when the 21 days limitation ended on the 3 May 2004, the petitioner was unable to file the election petition. By virtue of s 54(1)(b) Interpretation Act, if the last day of the period is a weekly holiday or a public holiday (referred to in this sub-section as excluded days) the period shall include the next following day which is not an excluded day.

**[44]** I do appreciate that this court cannot enlarge time but at the same time I am also constrained not to truncate time which the petitioner is entitled to consequent to the four days public holidays and Sunday that beset upon us from 1 to 4 May 2004. In my mind, not to allow 5 May 2004 as the last day for the petitioner to file his election petition will surely be a travesty of justice. A petitioner is acting within his right and is entitled to file the election petition on the last day of the limitation period. If it so happens that the last day is an excluded day as referred to under s 54(1)(b) of the Interpretation Act, then he may file on the next following day which is not an excluded day. I will not respond to the hypothetical illustration posed by counsel for the petitioner but I will say that I have no problem in accepting his submission that when the last day is a public holiday, based on s 54(1)(b) of Interpretation Act, the filing of the election petition can be done the next following day which is not a weekly holiday or a public holiday. The court registry was only opened on 5 May 2004 and the election petition and other documents were presented on the said day. I rule that the election petitions and other related documents were presented within time. Hence the need to examine the effect of the amendment to s 42(2) EOA becomes superfluous.

**[45]** Therefore, the second issue raised in the preliminary objection of the petition is also rejected and the election petition cannot be struck out on the strength of the said objection.

**[46]** Now I move on to the third issue.

*Issue No 3 — Whether a proper cause of action has been pleaded by the petitioner?*

**[47]** Although it is not obligatory for the petitioner to cite verbatim the provisions under which his petition is grounded, it is essential that the words used could sufficiently identify his eligibility to make a petition under either s 31 or s 32 EOA. While s 31 deals with avoidance by conviction of candidate, s 32 EOA deals with avoidance of election on election petition. Section 32 is therefore more relevant in our instant case.

**[48]** With the recent amendment effective from 16 January 2003, s 32 becomes 'exclusive' with the introduction of the word 'only'. It is clear therefore outside the parameter of s 32, there can be no election petition filed.

**[49]** Section 32 itemizes broadly five situations where election petitions, ifproven to the satisfaction of the election judge, the election of any candidate can be avoided. Section 32(a) deals with general bribery; (b) on non compliance

with any written law; (c) on corrupt practice; (d) and (e) are not applicable here. There is no doubt that s 32 constitutes the only ground upon which the petition may seek an order of the court to avoid the election. It must begin with s 32 and ends with s 32 EOA as it is the foundation for an election petition to be brought. As such if none of the five situations envisaged by s32 is pleaded there can be no cause of action upon which the petition can be brought.

**[50]** Section 11 of EOA on the other hand exists for a different reason and purpose. It deals with punishment and incapacities for corrupt practice. It deals with criminal prosecution of the defined offences coupled with the punishment upon conviction. Indeed to institute prosecution under s 11 the sanction of the Public Prosecutor must first be obtained.

**[51]** Let us examine the election petition proper at encl 3 which reads as follows:

> (3) And your petitioner says that the election of Dato' Seri Tiong King Sing was and/or ought to be declared void on the ground of corrupt practice under s11(c)(*sic*) of the Election Offences Act 1954.
>
> PARTICULARS
>
> The respondent, DATO' SERI TIONG KING SING and/or his agents had with his knowledge or consent during the above election printed, published, distributed and/or posted up or caused to be printed, published, distributed and/or posted up any advertisements, handbills or posters which refer to the said election and which do not bear upon their faces the names and address of their printer and publisher thereby contravening s 11(c) (*sic*) of the Election Offences Act 1954 ... .

**[52]** Counsel for the respondent submitted that as it stands, there is no cause of action being pleaded recognizable under our election laws. Indeed there is no such provision as s 11(c) of the Election Offences Act 1954. Section 11(c) appeared twice in the pleading of the petitioner. The first one appearing at the last line of para 3 and the second one appearing on the penultimate line of the 'Particulars' at the second page of the election petition at encl 3.

**[53]** There is however s 11(1)(c) of the Election Offences Act and it reads:

> Every person who *prints, publishes, distributes or posts up or causes to be printed, published, distributed or posted up any advertisement, handbill, placard or poster which refers to any election and which does not bear upon its face the names and addresses of its printer and publisher* shall be guilty of corrupt practice ... (punishment).

**[54]** Counsel for the respondent submits that there is no right which can be construed available to the petitioner to file an election petition based on s 11 EOA. He submits further that as far as s 11 is concerned, the proper coram is before the sessions court judge. I agree with this submission.

**[55]** The prayer of the election petition says as follows:

> WHEREFOR your petitioner prays that it might be determined that the respondent, the said DATO' SERI TIONG KING SING was not duly elected or returned, and/or that the election was and be declared void.

**[56]** Those words, 'praying to declare an election void' do not appear in s11 EOA but only in s 32 of the same Act.

**[57]** Counsel for the petitioner on the other hand concedes that the only ground the petitioner can seek an order of the court to avoid the election is *via* s 32 EOA. He further concedes that the wording of s 32(c) was not pleaded. However, he claims that the petition, by virtue of the particulars provided at para 3 of the petition has shown clearly that he is relying on s 32(c) and specifies that a corrupt practice was committed in connection with the election by the candidate or with his knowledge and consent. It was alleged that the corrupt practice have been fully particularized. The facts, he alleged, falls under s 32 and not s 11(1)(c) and least of all s 11(c) of the EOA. He submits further that by not mentioning s 32 does not constitute infirmity in pleading. I cannot agree with this submission. I note that the particulars found in para 3 is almost word for word of s 11(1)(c) and not s 32 EOA.

**[58]** On the authorities adduced by the respondent, ie the cases of *Norbert Choong Kai Chong v Mohamed Idris bin Haji Ibrahim* [1980] 1 MLJ 316 and *Muip bin Tabib v Dato' James Wong* [1971] 1 MLJ 246 counsel for the petitioner said that these are cases which concerns s 32(b) EOA. He referred this court to the case of *Mohd Nor bin Ismail v Mohd Zain bin Abdullah* [1988] 2 MLJ 384 where the learned Wan Yahya J (as his Lordship then was) said at p 228 of encl 96:

> … In para 6 of the first petition, the amendment is for the insertion of the words 'and contrary to s 32(b) of the Election Offences Act'. I cannot see how the introduction of these words can possibly prejudice the respondents' case. That section is only a general provision enabling the petitioner to make this petition. Although r 4(1)(a) of the Election Petition Rules requires the specification of the right of the petitioner to petition under s 34 of the Act, *there is no mandatory provision requiring any petitioner to cite this section in his petition. Section 32 itemizes broadly five situations ... . It is not obligatory for the petitioner to assert verbatim under which section and paragraph his petition is grounded.* He may use words to the like effect without citing the actual section or paragraph *so long as the words are sufficient to identify his eligibility to make the petition for avoidance under all or any of the five paragraphs mentioned therein.* I am not ruling at this juncture that the petitioner has complied with the requirements of r 4(b) and the purpose of his amendment is *merely to clarify these words so as to confine the petitioners' right to para (b) only*. In my opinion, the citation of this enabling provision is not tantamount to the addition or change in the petitioners' cause of action but *is merely inserted to clarify it;* or as Mr Jegathesan in his inimitable style puts it, *he was merely tagging his existing allegation with a perfunctory label.* (Emphasis added.)

**[59]** Upon further scrutiny of the said case, I note that this was an application by both the first and second petitioners seeking to redress the imperfections

of their petitions by motions to amend. This case was essentially to consider the amendment but as it turned out the petitions were all dismissed. With the greatest of respect if the observation made by the learned judge is right, it will mean that we will be over turning the entire body of established electoral law as decided by the cases not only in Malaysia by our Malaysian courts but also Privy Council cases. With great respect, I am of the view that the said case is not relevant as the facts are quite different with the instant case. As such I am unable to agree with the sentiment and observation made by the judge. In any event I am not bound by his learned decision.

**[60]** What is also interesting from this case is that Wan Yahya J (as his Lordship then was) also said at p 230 of encl 96 in his judgment that 'It is the mandatory obligation of the petitioner to associate his facts with the offending regulations.'

**[61]** Another case quoted by learned counsel for the petitioner was *Sabdin Ghani v Mohanied Saidi Lampoh* [1983] 2 MLJ 61 where Seah J (as his Lordship then was) said:

> Although the form in r 4(4) provides for the date for the holding of the election to be stated but it should be observed that this does not seem to be mandatory because the sub-rule stipulates that 'the following form, or one to the like effect, shall be sufficient'. In view of the wording of r 4(1)(b) and r 4(4) thereof, I am of the opinion that it is not mandatory to state the exact date of the election in the election petition. *A fortiori*, if an incorrect date or dates have been given or stated by the petitioners in the election petition, this would not vitiate the proceedings for the wrong date or dates could be amended without causing any injustice to the respondents.

**[62]** Essentially counsel for the petitioner made the following points:

(a) The form does not require a specific section to be pleaded or a perfunctory label to be tagged with;

(b) The words do not require the exact form to be adopted but 'one to the like effect'.

**[63]** The submission of counsel for the petitioner thereafter touched more on amendments and the authorities thereto which I feel is not necessary to consider at this stage.

**[64]** It will be noted that throughout the election petition at encl 3, s 32 EOA was never pleaded at all. Not even in the title, let alone the body of the petition. If s 32 EOA is not pleaded, there is therefore no cause of action. On this point alone there is a fatal defect and that fatal defect cannot be cured because it strikes at the root of the petition.

**[65]** On the two cases of *Norbert Choong v Mohamed Idris* and *Muip Tabib v Dato' James Wong*, although both refers to s 32(b), I accept the principle as

expounded by both the learned judges, Harun J (as his Lordship then was) and BTH Lee J respectively. The petitions were dismissed because of the failure of the petitions to indicate that they have been presented on the ground set down under s 32(b).

**[66]** The respondents need to know precisely the grounds the petitioner is relying on to declare an election void. At encl 3, it is obvious that the petition refers to s 11(c), which does not exist at all. Following one of the principles in *Mohd Nor Ismail v Mohd Zain Abdullah* that it is mandatory obligation of the petitioner to associate his facts with the offending regulations (p 230 of encl 96), the pleading of the petition at encl 3 relates to s 11(c) which is non-existent. Even accepting that it was s 11(1)(c), which the respondent have not conceded to anyway, that provision only relate to punishment and incapacities for corrupt practice. Both para 3 and the particulars at 2 of the petition at encl 3 suffer from the same defect. Be it s 11(c) or s 11(1)(c) EOA, it deals with criminal prosecution of the defined offences coupled with the punishment upon conviction. The words used at the particulars appearing at p 2 of the petition are words found in s 11(1)(c) EOA which, by his own admission do not constitute the ground upon which the petitioner can seek an order of the court to avoid the election.

**[67]** Section 32(c) EOA which must be pleaded is missing from the petition. Without s 32(c) being pleaded, there is no cause of action on which the petition can be brought. Section 32 confers to the court the jurisdiction to hear the election petition in that it lists down the grounds on which relief can be prayed for. These are the only grounds which can be raised by the petitioner. What is present in the petition is s 11(c) which is not the provision for avoidance of an election on election petition. Therefore it is not made known to the respondent that the ground is s 32(c) EOA. When it is not stated in the petition the grounds upon which the petitioner relied on to nullify the election, such omission is fatal because a petition should adduce one of the five grounds under s 32 of the Election Offences Act. The respondent needed to know clearly and accurately which of the grounds the petitioner was relying upon to declare the election void, see the decision of Zulkefli J in *Mohamad Hanafi bin Seman lwn Wan Othman bin Wan Yusoff* [2000] 3 MLJ 482.

**[68]** A petitioner who is challenging the successful candidate must show, first of all, that he has a right to be heard under any or all the five situations enumerated under s 32 EOA. Further a petition under r 4 EPR must not only narrate the facts but must relate the facts or associate the complaints with the provision of the election laws the respondent was alleged to have transgressed. It is my view that para 3 of the petition and the particulars therein at p 2 of the petition does not constitute grounds with para (c) of s 32. It resembles more of s 11(1)(c) which does not confer any right to apply to this court for avoidance of election. Contrary to what has been submitted by learned counsel for the petitioner, it is not merely tagging his existing allegation with a

perfunctory label, but the label does not suit the allegation. The fact that s32(c) EOA was not pleaded is fatal to the petition and cannot be cured. If there is a failure to plead s 32, ipso facto, the election petition suffers from jurisdictional defects and ought to be struck out. I hold that the petition has therefore failed to comply with the mandatory provision of r 4(1)(b) of the Election Petition Rules and must therefore be dismissed.

**[69]** I will now move to the last issue before this court.

*Issue No 4 — Whether the said election petition failed to comply with the mandatory provisions of r 3(2) of the Election Petition Rules which requires that it shall be left with the election petition two copies thereof with the court?*

**[70]** Rule 3(2) of the Election Petition Rules requires that when the petitioner presents his petition at the office of the registrar of the court, '*there shall be left with the petition two copies thereof*.'

**[71]** I do not believe that counsel for the petitioner will deny that there is only one copy of the petition that is left in the court. I say this because, in his affidavit affirmed on 9 August 2004 and filed herein, he said that the petitioner presented 10 copies of the petition to the office of the Deputy Registrar of the Miri High Court on 5 May 2004 and nine copies were returned by the court on 10 May 2004. There is therefore no dispute at all that there was only one copy of the petition left in the court.

**[72]** What is being disputed is that the petitioner submitted that he has already complied with the said requirement of leaving 10 copies of the petition with the court. The petitioner cannot be blamed or faulted if the court chooses to return nine copies to him and adduced the maxim of *actus curiae neminem gravabit* where the act of the court shall prejudice no one and offered the case of *Board of Trustees of the Sabah Foundation v Datuk Syed Kechik* [1997] 4 MLJ 553. On the facts of this case, it is felt improper to apply the general principle in the case of *Board of Trustees of the Sabah Foundation* here as the facts and laws are different. In r 3(2) of the Rules, we are concerned squarely on the petitioner's obligation. It has nothing to do with the court's obligation. The said case can therefore be distinguished.

**[73]** The fact that 10 copies of the petition have been left with the court upon payment of the praecipe, the petitioner, argued his counsel, has thereby discharged his duty under the rules. Further he said at para 10 of the said affidavit the provision is directory and non compliance is a mere irregularity. I cannot agree with counsel for the petitioner for the following reasons.

**[74]** Firstly, the election law is a creature of statute, peculiar in nature and confers certain rights and provides a remedy for enforcing those rights (*Tengku Korish v Mohd bin Jusoh* [1970] 1 MLJ 6). Secondly the preemptory language of the rule requires strict compliance. Thus it is well-established that the right of a person to file an election petition is derived from a specific statute relating

to election and that any procedure laid down by such a special statute shall be strictly adhered to as it is mandatory (see *Dr Lee Chong Meng v Abdul Rahman bin Haji Abdullah (No 2)* [2000] 3 MLJ 219 per Augustine Paul J (as his Lordship then was) at p 231. Thirdly, the language employed in r 3(2) of the rules is lucid, plain and clear. It clearly imposes a duty on the petitioner to leave the two copies with the petition at the court. Augustine Paul J (as his Lordship then was) said in *Ramely bin Mansor v Suruhanjaya Pilihanraya Malaysia & Ors* [2000] 2 CLJ 56 at 61:

> The language of r 3(2) imposes a statutory obligation on the petitioner to leave two copies of the petition with the court. Rule 3(2) does not say, as correctly submitted by the learned counsel for the third respondent, that the court shall retain two copies of the petition in which event it will become the responsibility of the court to do so when more than two copies are filed. The words '.. .shall also be left ...' in r 3(2) show that it is the obligation of the petitioner to leave the two copies with the court.

**[75]** Fourthly, r 3(2) does not use the word 'presented'. The words used were 'shall be left'. 'Presenting' is not the same as 'leaving' the documents in court's docket. By *Oxford Advanced Learner's Dictionary* the meaning of 'leave' is (cause to) remain, allow to remain.

**[76]** Counsel for the petitioner urged the court to adopt a purposive approach to the law and cited the Federal Court case of *DYTM Tengku Idris Shah Ibni Sultan Sallahuddin v Dikim Holdings Sdn Bhd* [2002] 2 MLJ 11. I am not persuaded by the said contention of counsel for the petitioner and agree with the submission of counsel for the respondent that there is no room to adopt purposive approach in election matter. If at all, the purposive approach was to be in line with the general principle of the electoral laws which require clear provisions to be complied with strictly. Just because, Mr Ling Kuong Meng accepted service on behalf of the respondent, it cannot be said that the petitioner need not comply with r 3(2). This is a rule of public policy where parties cannot contract out of it. Why must there be two copies and not one copy can be a matter of debate but the law is clear. The petitioner must leave with the petition two copies thereof in the court's docket.

**[77]** One would have seen in *Ramely Mansor v Suruhanjaya Pilihanraya Malaysia & Ors* that the language used is strong but the principle laid down is clear. Zulkefli H in *Mohamad Hanafi bin Seman lwn Wan Othman bin Wan Yusoff* said of r 3(2) in the following manner:

> The provisions of r 3(2) of the Rules is mandatory in nature and not directory. The language employed in promulgating the provision of r 3(2) is a language that is clear and easy to understand. Hence there was no confusion on the meaning of the rule's provision. The statutory requirements of an election petition must be strictly and fully complied with because a dispute on election is statutory proceeding that is special as well as exclusive and that which is foreign to common law or equity.

**[78]** Zulkefli J said further that 'the provisions of r 3(1) and (2) when read together provide that all three copies of the petition including the original must be lodged at the court registry office. Hence there was no other recourse and the petitioner should comply although service of a notice of petition and a copy of the petition under the second part of r 15 of the rules on the first respondent could be executed when there is still a copy of the petition apart from the original lodged at the court registry office.'

**[79]** With respect I agree with what has been said by the judge. Rule 3(2) clearly imposes statutory obligation on the petitioner and if this is not fulfilled, that afford the ground for the election petition to be struck out. The requirement to leave copies as provided is mandatory and non-compliance with the rule will result in dismissal of the petition (see *Re Burrard Dominion Election* (1901) 22 CLT 10; *Satya Narain v Dhuja Ram &Ors* AIR 1974 SC 1185)

**[80]** Whether service becomes an issue or not the statutory obligations to leave two copies with the original is clear.

**[81]** Therefore in the context of r 3(2) and the clear line of cases, there is no room to apply the Latin maxim *Actus curae naminem gravabit* as the statutory obligation of the petitioner is very clear.

**[82]** It can be observed that the requirement to leave two copies with the petition as provided is mandatory and any non compliance with the rule will result in the dismissal of the petition. Any non compliance of r 3(2) is fundamental and serious and will result in jurisdictional defect.

**[83]** In this respect, Thomson LP in *Yong Kuan Teik v Devan Nair* [1965] 2 MLJ 162 at 164 said:

> It is not a jurisdiction to deal with the rights and obligations of individuals as in the ordinary civil jurisdiction of the court. It is a jurisdiction to deal with matters affecting on the one hand the integrity of the country's legislature and on the other hand the representation in that legislature of constituencies comprising many thousand of electors. As was said by Lord Abinger CB, in the case of *Coppock v Bower* 4 M & W 361, 366 an election petition 'is a proceeding instituted not for the benefit of the individuals, but of the public and the only interest in it which the law recognizes, is that of the public.'

**[84]** It has been shown in the long line of authorities that the mandatory provisions of the Election Petition Rules must be complied with strictly. The failure of the petitioner to leave two copies with the petition means non compliance of a mandatory provision of the rule and this will result in the dismissal of the petition. When the law is clear, my role as a judge is to accept the law as it is:

> 'The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law

and the court possesses no common law power. It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirement of the law:' per Mahajan CJ in *Jagan Nath v Jaswant Singh & Ors* [1954] SCR 892 at 895.

**[85]** In conclusion, it is obvious that the petitioner has not complied with r3(2) of the Rules when he failed to leave the two copies with the petition in the court. It has also been seen earlier that the petitioner has also failed to comply with the provisions of r 4(1)(b) of the Rules in not pleading s 32 of the Election Offences Act in the election petition. These are mandatory requirements.

**[86]** The natural consequence of any failure to comply with any of the mandatory requirements when presenting his petition renders the petition defective and the petition must be dismissed. Accordingly this petition is dismissed with costs to be taxed to the respondent. Money deposited by way of security may be applied towards payment of costs.

**[87]** I hereby determine that Dato' Seri Tiong King Sing as duly elected to the Parliamentary Constituency of P216 Bintulu and that his election is therefore not void.

**[88]** On the question of costs for two counsels, I am of the view that we have not really come to the nitty-gritty complex part of the petition yet. I see no compelling reason to exercise such discretion as this hearing is only in respect of the notice of motion at encl 58 pertaining to the preliminary objections of the respondent. At this stage, I am sure counsel will agree that the matters raised, are not that complex in nature unlike the substantive hearing of the case. Regretfully I am unable to accept the reasoning given by counsel for the respondent that there are several new areas of the election law as a basis to allow costs for two counsels.

*Petition dismissed with costs.*

Reported by Loo Lai Mee